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August 18, 2023

**VIA ECF**

The Honorable Jesse M. Furman  
Southern District of New York  
40 Centre Street, Room 2202  
New York, NY 10007

Re: *Golden Unicorn Enterprises, Inc. et al. v. Audible, Inc.*,  
Case No. 1:21-cv-07059-JMF

Your Honor:

Pursuant to the parties' agreed-upon procedure (*see* ECF No. 282), Audible respectfully seeks leave to file sealed and redacted versions of its Supplemental Brief in Support of Audible's Motion for Summary Judgment ("MSJ Suppl. Reply"). Further, pursuant to the parties' procedure, Audible seeks to preliminarily seal its MSJ Suppl. Reply pending Plaintiffs' review and potential motion to seal or redact. *See* ECF No. 282.

As discussed in Audible's letter-motion to seal and redact materials from Plaintiffs' Motion for Class Certification (*see* ECF No. 144), although there is a presumption of public access, a court must balance "countervailing factors," including privacy interests as well as confidential and proprietary business information. *See Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2006); *Kewazinga Corp. v. Microsoft Corp.*, No. 1:18-cv-4500 (GHW), 2021 WL 1222122, at \*4-6 (S.D.N.Y. Mar. 31, 2021); *Lexington Furniture Indus., Inc. v. Lexington Co.*, AB, No. 19-CV-6239 (PKC), 2021 WL 1143694, at \*2 (S.D.N.Y. Mar. 24, 2021).

Here, Audible seeks to redact confidential, sensitive business information, or information that could cause competitive harm. *See* ECF No. 144 (citing cases); *see, e.g., Kewazinga*, 2021 WL 1222122, at \*4-6.

Audible seeks narrow redactions of internal information regarding returns and confidential internal business practices. These redactions seek to protect sensitive business information that, if made public, could threaten competitive harm. Audible's proposed redactions on page 5-6 are the same redactions Audible sought in relation to Plaintiffs' Statement of Undisputed Material Facts. *See* ECF Nos. 256, 263.

We are happy to provide any additional information that may be useful to the Court.

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Respectfully,

FENWICK & WEST LLP

*/s/ Brian D. Buckley*

Brian D. Buckley

cc: All counsel of record (via ECF)

The motion to seal is granted temporarily. The Court will assess whether to keep the materials at issue sealed or redacted when deciding the underlying motion. The Clerk of the Court is directed to terminate ECF No. 289 and modify access to ECF No. 290 to include all case participants.

SO ORDERED.

A handwritten signature in black ink, appearing to read "J. M. Jones", is written over the "SO ORDERED." text.

August 21, 2023